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Separation of Church and State: Jefferson, Lincoln, and the Reverend Martin Luther King, Jr., Show It Was Never Intended to Separate Religion from Politics†

Samuel W. Calhoun*

Abstract

This Essay argues that it's perfectly fine for religious citizens to openly bring their faith-based values to public policy disputes. Part II demonstrates that the Founders, exemplified by Thomas Jefferson, never intended to separate religion from politics. Part III, focusing upon Abraham Lincoln's opposition to slavery, shows that religion and politics have been continuously intermixed ever since the Founding. Part IV, emphasizing the Reverend Martin Luther King, Jr., argues that no other reasons justify barring faith-based arguments from the public square.

† This Essay is a version of my presentation at Washington and Lee University's March 2018 Institute for Honor Symposium: *Religious Values and Public Policy: What Does Separating Church and State Require?* My symposium talk was, and this essay is, in large part comprised of excerpts from three of my previously published pieces. The prior article excerpted most frequently is Samuel W. Calhoun, *May the President Appropriately Invoke God? Evaluating the Embryonic Stem Cell Vetoes*, 10 RUTGERS J.L. & RELIGION ONLINE 1 (2009). I also rely upon: (a) Samuel W. Calhoun & Lucas E. Morel, *Abraham Lincoln's Religion: The Case for His Ultimate Belief in a Personal, Sovereign God*, 33 J. ABRAHAM LINCOLN ASS'N 38 (2012); and (b) Samuel W. Calhoun, *Getting the Framers Wrong: A Response to Professor Geoffrey Stone*, 57 UCLA L. REV. DISCOURSE 1 (2009). To enhance the readability of my annotations, I sometimes cite the original sources of excerpted material rather than my previous work in which it first appeared.

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I. Introduction

I've long grappled with the question of whether it's appropriate for religious believers to rely upon their faith in advocating solutions to public policy disputes.¹ Columbia University Professor Kent Greenawalt calls this "a particularly significant, debatable, and highly complex problem."² The issue most recently attracted my attention in teaching a seminar on the abortion controversy, which I've offered frequently since 1994. The seminar has always included a discussion of the role of religious values in the abortion dispute. Several times over the years, including the 2018 spring semester, I've heard students express themselves along these lines: "I'm personally pro-life because it's morally wrong to destroy an innocent human life that is a gift from

1. My struggle is reflected in my changing views. For my original thinking on the subject, see Samuel W. Calhoun, *Conviction Without Imposition: A Response to Professor Greenawalt*, 9 J.L. & RELIGION 289 (1992); see also Samuel W. Calhoun, *Misreading the Judeo-Christian Tradition and the Law: A Response to Professor Smolin*, 15 U. DAYTON L. REV. 383, 397–98 (1990) (written after my reply to Professor Greenawalt, but published earlier). For the first in-print statement of my revised position, see Samuel W. Calhoun, Book Review, 16 J.L. & RELIGION 405, 411–13 (2001) (reviewing ELIZABETH MENSCH & ALAN FREEMAN, *THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE?* (1993)). For a brief explanation of my changed perspective, see *infra* note 6.

2. KENT GREENAWALT, *WHEN FREE EXERCISE AND NONESTABLISHMENT CONFLICT* 201 (2017). Professor Greenawalt's thoughtful discussion of this subject thirty years ago evoked my initial foray into this challenging subject. See Calhoun, *Conviction Without Imposition*, *supra* note 1. Professor Greenawalt's new book continues his tradition of excellence in addressing this "complex problem," many aspects of which are beyond the scope of this short essay. See, e.g., GREENAWALT, *supra* at 201–45.

God. But I'm politically pro-choice because our country is committed to the separation of church and state. It's not right for me to impose my religious views upon another person."³

I'm puzzled by this stance because separating church and state was never intended to separate religion from politics.⁴ The abolitionist and civil rights movements, for example, were not only largely motivated by Christian values, but also were pervaded with Christian terminology.⁵ These pivotal human rights campaigns are now heralded parts of American history. Should they instead be

3. Although these particular religious students were pro-life, assigned readings in my seminar make clear that some pro-choicers also explain their positions in religious terms. One assignment, for example, is DR. WILLIE PARKER, *LIFE'S WORK: FROM THE TRENCHES, A MORAL ARGUMENT FOR CHOICE* 32–37 (2017).

4. The late Justice Antonin Scalia agreed. See Antonin Scalia, *Church and State*, Address at Pontifical North American College (Dec. 1989), in *SCALIA SPEAKS: REFLECTIONS ON LAW, FAITH, AND LIFE WELL LIVED* 134, 134–36 (Christopher J. Scalia & Edward Whelan eds., 2017)

No principle of American democracy is more fundamental than . . . the separation of church and state . . . [but] [i]t would be wrong to think . . . [this] means that the political views of men and women must remain unaffected and uninformed by their religious beliefs. That would be quite impossible to achieve and is assuredly not part of our political tradition . . . From abolition to prohibition, the secular arrangements that Americans have voted for, or indeed fought for, have often been related to their religious beliefs.

5. Regarding the abolitionists,

[e]vangelism and the antislavery movement were inseparable. This was so because slavery and Christianity were absolutely antithetical to such a degree that from [the mid-1750s onward] greater emphasis was placed upon the sin of slavery—its denial of the equality of all men in the sight of God—than upon any other indictment.

DWIGHT LOWELL DUMOND, *ANTISLAVERY: THE CRUSADE FOR FREEDOM IN AMERICA* 158 (1961). At the time, not all Christians agreed. See *infra* note 9. Regarding the Civil Rights Movement, the Reverend Martin Luther King, Jr.'s "first uses of the nonviolent method were based more on the Bible and Christian pacifism than on the teachings of the Mahatma [Gandhi]." JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICAN'S CIVIL RIGHTS YEARS, 1954-1965* 79 (1987). "King always insisted that Christ provided the 'spirit and motivation,' and Gandhi the practical 'method,' of the civil rights movement." TIMOTHY P. JACKSON, *POLITICAL AGAPE: CHRISTIAN LOVE AND LIBERAL DEMOCRACY* 386 (2015) (quoting MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM* 85 (1958)). King believed "that the meaning of Christian discipleship was at the heart of the African American struggle for freedom, justice and equality." MARTIN LUTHER KING, JR., *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 84 (James Melvin Washington ed., 1992). For examples of King's public use of Christian terminology, see *infra* notes 129–132 and accompanying text; *infra* notes 119, 150.

viewed negatively because they violated the principle of separating church and state? The answer is “no.” It’s perfectly fine for religious citizens to openly rely on their faith in advocating solutions to public policy disputes.⁶

To defend this position, Part II demonstrates that the Founders, exemplified by Thomas Jefferson, never intended to separate religion from politics. Part III, focusing upon Abraham Lincoln’s opposition to slavery, shows that religion and politics have been continuously intermixed ever since the Founding. Part IV, emphasizing the Reverend Martin Luther King, Jr., argues that no other reasons justify barring faith-based arguments from the public square. Although I’ll be emphasizing Christianity,⁷ my defense of the appropriateness of religious values in public life isn’t limited to one religion. Those of all faiths are free to bring their faith-based values to public policy disputes.

To make my stance clear, it’s important to state five things that I’m *not* arguing. First, I don’t think that any religious perspective—including Christianity—is of right entitled to preeminence in American political life.⁸ Second, I don’t believe that

6. As previously mentioned, *supra* note 1, my views on this subject have evolved. I once adhered to what I named the non-imposition principle—Christianity itself requires that Christians avoid using law to impose faith-based standards. Calhoun, *Conviction Without Imposition*, *supra* note 1, at 292–93, 304–08. To apply the non-imposition principle, “I urged Christians, before seeking . . . a law . . . [that implemented faith-based precepts, to] carefully evaluate the relevant weight of their reasons. Only if secular reasons, standing alone, justified their support could Christians seek the law without imposing their faith.” Calhoun, Book Review, *supra* note 1, at 412. Now, however, because “God is the source of reasoning ability,” I find it “abhorrent” to urge “Christians, even if only momentarily, to strip God from their thoughts.” *Id.* In addition, “my God-given reason has been corrupted by sin. I thus have no basis for confidence in any reasoning that I do while trying to block God’s influence. Instead, I should always ask God to guide me as I exercise my reason.” *Id.* at 412 n.24.

7. I do so because I’m a Christian. The core teaching of Christianity is that sin “separates all of mankind from a holy God . . . [T]he only way to righteousness before God is through faith in Jesus Christ, who on the cross paid the penalty for sin.” Calhoun, *Conviction Without Imposition*, *supra* note 1, at 306. For other Christian tenets, see *id.* at 292, 304; *infra* text accompanying note 65.

8. This statement reflects my critique of Professor David Smolin’s case for “the authoritative nature of the Judeo-Christian tradition” in American legal discourse. See Calhoun, *Misreading the Judeo-Christian Tradition*, *supra* note 1 (discussing David M. Smolin, *The Judeo-Christian Tradition and Self-Censorship in Legal Discourse*, 13 U. DAYTON L. REV. 345 (1988)). Professor Smolin believes that I misinterpreted what he meant by “authoritative.” See generally David M.

there necessarily is a single, exclusive Christian position on any public policy issue.⁹ Third, I don't contend that Christians should try to implement all of their moral views through law.¹⁰ Fourth, I don't assert that Christians should always use explicitly religious language to articulate their faith-based support for, or opposition to, a particular law.¹¹ Fifth, I don't posit that Christians, or those of any faith, should expect any religious arguments to readily

Smolin, *The Enforcement of Natural Law by the State: A Response to Professor Calhoun*, 16 U. DAYTON L. REV. 381 (1991).

9. Christians have often been on both sides of controversial matters. Abraham Lincoln, referring to the ongoing Civil War in his Second Inaugural, called attention to one such example: "Both [parties] read the same Bible, and pray to the same God; and each invokes His name against the other." Abraham Lincoln, Second Inaugural Address (Mar. 4, 1865), in VIII THE COLLECTED WORKS OF ABRAHAM LINCOLN, at 332, 333 (Roy P. Basler ed., 1953). Although Christian abolitionists believed that slavery was "absolutely antithetical" to Christianity, Professor Dwight Dumond argues that most Christians in the South didn't accept "the social teachings of Jesus in reference to the racial problem" due to a "religious fundamentalism . . . [that] rejected *in toto* the social welfare aspects of the evangelistic crusade and the doctrine of Christian benevolence." DUMOND, *supra* note 5, at 158.

Even though I acknowledge that Christians have often disagreed on complex public policy issues, this doesn't mean I think that clear-cut, exclusive Christian positions don't exist. On abortion, for example, I believe that unambiguous biblical principles require all Christians to view "the wholesale slaughter of preborn life occurring in the United States today . . . [as] nothing less than a moral abomination." Samuel W. Calhoun, *Grounding Normative Assertions: Arthur Leff's Still Irrefutable, but Incomplete, 'Sez Who?' Critique*, 20 J.L. & RELIGION 31, 92 n.331 (2004–05). For the argument that Christian compassion supports a woman's freedom to choose abortion, see PARKER, *supra* note 3, at 92–93, n. 331.

10. "No one seeks legal enforcement of every personally held moral position. Consequently, everyone, not only Christians, must decide which moral claims should be reinforced by law." Calhoun, *supra* note 9, at 62.

11. The issue posed is this: "[I]f a Christian's moral view on a particular matter is premised ultimately in the Bible, should the Christian always be explicit about this [b]iblical foundation?" Calhoun, *supra* note 9, at 62. Once, in defending the appropriateness of a Christian's foregoing explicitly religious arguments on public issues, I expressed concern that doing so might violate a Christian's duty "to bear witness to the world of the reality of God." Samuel W. Calhoun, *Are Religious Arguments Appropriate in Civil Discourse?*, 9 CHRISTIAN LEG. SOC'Y Q. 32, 32 (1988). These misgivings were in part due to the late Professor Tom Shaffer's (a friend and former colleague) suggestion "that a Christian who fails to make openly denominational arguments is disobeying Christ." *Id.*; see *infra* note 150.

convince even their fellow believers,¹² much less people of other faiths or the non-religious.

As stated, however, I do think it's perfectly fine for religious citizens to openly rely on their faith in advocating solutions to public policy disputes. Part I shows that the Founders didn't intend to separate religion from politics.¹³

12. The slavery, abortion, and animal rights debates are examples of how religious arguments can fail to convince fellow Christians. See *supra* note 9; *infra* note 145. An especially interesting additional example is embryonic stem cell research. President George W. Bush relied in part on his Christian faith to ban federally funded research that deliberately destroyed human embryos. See Samuel W. Calhoun, *May the President Appropriately Invoke God? Evaluating the Embryonic Stem Cell Vetoes*, 10 RUTGERS J.L. & RELIGION ONLINE 1, 3 (2009). Likewise, President Barack Obama relied in part on his Christian faith in lifting the federal ban. See Samuel W. Calhoun, *Getting the Framers Wrong: A Response to Professor Geoffrey Stone*, 57 UCLA L. REV. DISCOURSE 1, 13 n.87 (2009).

13. The ensuing discussion will focus upon Thomas Jefferson, but there were, of course, other important Founders, including George Washington. The continuing relevance of the Founders' attitudes toward religion is shown by a comment in Ron Chernow's superb biography of George Washington. Referring to the "well-known image of Washington . . . praying on his knees" at Valley Forge, Chernow concludes that it "seems designed to meld religion and politics by converting the uniformed Washington into a humble supplicant of the Lord." RON CHERNOW, *WASHINGTON* 326 (2010). Chernow doubts that the incident occurred, not because Washington lacked religious faith, but because he "never would have prayed so ostentatiously outdoors, where soldiers could have stumbled upon him." *Id.* Chernow implies that any public display of religiosity by Washington would've signaled his melding of religion and politics. Given that Chernow relates multiple examples of Washington's public invocation of religion, applying this evaluative standard compels the conclusion that Washington routinely melded politics and religion. See, e.g., *id.* at 335 (stating that Washington expressed gratitude to "the Almighty ruler of the Universe" for the French alliance); *id.* at 360 (stating that Washington urged Delaware Indian chieftains to learn "the religion of Jesus Christ"); *id.* at 384 (explaining that Washington credited "divine intervention" for thwarting Benedict Arnold's treasonous plot); *id.* at 442-44 (discussing Washington's fervent prayer, in his "Circular to State Governments," that God would, among other things, keep the states "in his holy protection"); *id.* at 568 (stating that Washington fervently kissed the Bible after taking his first inaugural oath as President); *id.* at 569 (describing how Washington, in his first inaugural address, stated that "[n]ational policy needed to be rooted in private morality, which relied on the 'eternal rules of order and right' ordained by heaven itself"); *id.* at 609 (explaining that Washington proclaimed "the first Thanksgiving . . . declaring that 'Almighty God' should be thanked for the abundant blessings bestowed on the American people, including victory in the war against England, creation of the Constitution, . . . and the 'tranquility, union, and plenty' that the country now enjoyed"). This Thanksgiving Proclamation is particularly significant because Washington issued it in response to a Congressional resolution asking him to do so. See STEPHEN MANSFIELD, *TEN TORTURED WORDS: HOW THE FOUNDING FATHERS TRIED TO PROTECT RELIGION IN*

II. The Founders Didn't Intend to Separate Religion from Politics

A dozen years ago, several popular books launched “a rhetorical war of extermination against God,”¹⁴ including Richard Dawkins’s *The God Delusion*,¹⁵ Sam Harris’s *The End of Faith*,¹⁶ and Christopher Hitchens’s *God Is Not Great: How Religion Poisons Everything*.¹⁷ Dawkins, Harris, and Hitchens “collectively express alarm and disdain for the annoying persistence of a belief in a supernatural deity.”¹⁸ The authors also expound their own view of the Founders’ concept of the proper relationship between religion and public life. “The common drum they beat is ‘separation of church and state,’”¹⁹ a phrase extracted from Thomas Jefferson’s 1802 letter to the Baptist Association of Danbury, Connecticut.²⁰ Jefferson characterized the First Amendment as “building a wall of separation between Church and State.”²¹ The three authors interpret the phrase to mean that religion should be separated from public policy.²² For example, Richard Dawkins states that “the founders most certainly were secularists who believed in keeping religion out of politics.”²³

AMERICA . . . AND WHAT’S HAPPENED SINCE 24 (2007). The resolution was adopted the day “after Congress approved the language of the First Amendment,” thus refuting any notion that the Founders passed that amendment to create a secular state. *Id.* at 23–24; *see id.* at 25 (noting that Congress approved compensation for House and Senate chaplains during this same period).

14. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 6.

15. RICHARD DAWKINS, *THE GOD DELUSION* (2006).

16. SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* (2004). *See also* SAM HARRIS, *LETTER TO A CHRISTIAN NATION* (2006).

17. CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007).

18. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 6.

19. *Id.* at 11.

20. Thomas Jefferson, *Reply to Danbury Baptist Association* (Jan. 1, 1802), *in* *THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON* 332 (Adrienne Koch & William Peden eds., 1944).

21. *Id.*

22. *See* Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 11.

23. Dawkins, *supra* note 15, at 41. Given Dawkins’s blatant factual distortions regarding the Founders’ religious beliefs, his historical assessments warrant extreme skepticism. *See* Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 8–10. For how George Washington’s example in itself refutes Dawkins’s assertion, *see supra* note 13.

It's interesting that so many rely upon Jefferson's "wall of separation" metaphor as a shorthand expression of the Founders' understanding of the proper relationship between law and religion. Jefferson wasn't a delegate to the Constitutional Convention.²⁴ In fact, he wasn't even in the country when the Convention drafted and adopted the Constitution.²⁵ He also wasn't present for the debates preceding Congress's September 1789 adoption of the First Amendment.²⁶ The late Chief Justice of the United States Supreme Court, William Rehnquist, believed that those debates show that the First Amendment's Establishment Clause was meant only to prevent the establishment of a national church and governmental preference for one religious sect over another.²⁷ Consequently, there is no "historical basis" for viewing Jefferson's wall of separation metaphor as embodying a "theory of rigid separation" of church and state.²⁸ Moreover, the wall imagery has proven to be

24. WILLARD STERNE RANDALL, *THOMAS JEFFERSON: A LIFE* 480 (1993).

25. *Id.* at 480–81.

26. Debate began in mid-August 1789, and Congress approved the First Amendment on September 25, 1789. MANSFIELD, *supra* note 13, at 21–23. Jefferson was in Paris throughout this period. *See* RANDALL, *supra* note 24, at 488–89.

27. *Wallace v. Jaffree*, 472 U.S. 38, 98, 99, 106 (1985) (Rehnquist, J., dissenting). Congress, in adopting the First Amendment, meant to protect "the states' authority to establish religion," while "cut[ting] off" its own authority to do so. MANSFIELD, *supra* note 13, at 23; *see* Calhoun, *Getting the Framers Wrong*, *supra* note 12, at 9 (citations omitted) (explaining that John Adams feared a national established church, but "had no qualms" about state establishments). Even though Jefferson didn't participate in these debates, *see supra* note 26 and accompanying text, he, like Congress and John Adams, was principally concerned with *national* government interference with religious beliefs:

In matters of religion, I have considered that its free exercise is placed by the constitution independent of the powers of the general government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the constitution found them, under the direction and discipline of State or Church authorities acknowledged by the several religious societies.

Thomas Jefferson, Second Inaugural Address (Mar. 4, 1805), *in* LIFE AND SELECTED WRITINGS, *supra* note 20, at 339, 341. Jefferson's concern with national, not state, religious intrusions is corroborated by the fact that he, as President, "refused to issue 'executive proclamations recommending religious observances,' [but] as Governor of Virginia" he appointed a day for offering prayer and thanksgiving to God. Calhoun, *supra* at 10–11.

28. *Wallace*, 472 U.S. at 106 (Rehnquist, J., dissenting).

“all but useless as a guide to sound constitutional adjudication.”²⁹ Jefferson’s metaphor should therefore “be frankly and explicitly abandoned.”³⁰ It’s likely, however, that the wall of separation imagery is now too deeply ingrained in the American psyche to be easily removed. We should, though, strive not to distort the phrase by giving it a meaning Jefferson didn’t intend.

Other, often ignored, language in Jefferson’s 1802 letter demonstrates that his wall was meant to insulate religious belief and practices from legislative interference,³¹ not to separate religion from politics.³² He told the Baptists that he viewed the First Amendment with reverence because “religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, [and] that the [legitimate] powers of government reach actions only, and not opinions.”³³ These ideas very closely reflect Jefferson’s 1786 Virginia Statute for Religious Freedom.³⁴ The Statute says nothing to prohibit

29. *Id.* at 106–07.

30. *Id.* at 107.

31. Jefferson intended separation of church and state to protect religious freedom by preventing government interference “with a person’s religious beliefs and practices.” JOSEPH J. ELLIS, *AMERICAN SPHINX: THE CHARACTER OF THOMAS JEFFERSON* 296 (1997). See *infra* note 38.

32. “The wall Jefferson referred to is designed to divide church from state, not religion from politics.” JON MEACHAM, *AMERICAN GOSPEL: GOD, THE FOUNDING FATHERS, AND THE MAKING OF A NATION* 19 (2006). “The . . . legislative abuse . . . [Jefferson] most likely had in mind was an established religion[.]” Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 13 n.57, especially an established national church. See *supra* note 27.

33. Jefferson, *supra* note 20. “The dichotomy between beliefs and actions is typically Jeffersonian.” Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 13 n.56. For example, he draws the same distinction in the 1786 Virginia Statute for Religious Freedom. See *infra* note 38 and accompanying text.

34. Jefferson’s pride in authoring the Statute is signaled by its inclusion as one of only three achievements he listed on his tombstone. RANDALL, *supra* note 24, at 595. The Statute has inspired florid praise: Many of Jefferson’s Virginia legislative efforts are now of interest only to the legal antiquarian. They are as obscured by the mists of history as the foothills of the Blue Ridge by October’s blue veils. But rising majestically into view are certain peaks that soar into the universal empyrean. Among these are Jefferson’s Statute for Religious Freedom which in his lifetime was translated into foreign languages and came to be recognized as one of the great documents of human liberty.

ALF J. MAPP, JR., *THOMAS JEFFERSON: A STRANGE CASE OF MISTAKEN IDENTITY* 125 (1987).

religion's influence upon law.³⁵ Instead, its famous preamble defends freedom for religious opinions for numerous reasons, among them that "Almighty God . . . created the mind free";³⁶ that coercing religious belief "by temporal punishments . . . [promotes] habits of hypocrisy and meanness";³⁷ that civil government can rightfully "interfere [only] when principles break out into overt acts against peace and good order";³⁸ and that truth needs no protection other than "her natural weapons, free argument and debate."³⁹

"Other evidence confirms that Jefferson never intended to insulate politics from religion. The Declaration [of Independence] itself is clear proof. One can hardly imagine an act more 'political' than the formation of a new government."⁴⁰ But why was this new government necessary? To protect unalienable rights endowed by the Creator.⁴¹ "It was the King's usurpation of these rights that justified the Revolution."⁴² Consequently, if separating church and state "means the insulation of politics from religion, the

35. The Statute's operative language prohibits compelled worship and punishment for "religious opinion or belief." *An Act for establishing Religious Freedom [1779], passed in the Assembly of Virginia in the beginning of the year 1786*, in LIFE AND SELECTED WRITINGS, *supra* note 20, at 311, 313. It also declares "all men[s]" freedom to hold and defend "their opinions in matters of religion" without "affect[ing] their civil capacities." *Id.* Compelling evidence that Jefferson's Statute didn't envision "a completely secular state" is that Jefferson, contemporaneously with the religious liberty statute, also presented other proposed laws regarding religion, including measures imposing fines for breaking the Sabbath, "defining marriage in biblical terms," and fining "couples found cohabitating." See MANSFIELD, *supra* note 13, at 43–44, 182–89.

36. *Act for establishing Religious Freedom*, *supra* note 35, at 311.

37. *Id.*

38. *Id.* at 313. According to the late Professor William Miller, Jefferson inserted this clause allowing "governmental restraint on overt acts as a concession to strengthen his true point: that belief itself should be free." WILLIAM LEE MILLER, *THE FIRST LIBERTY: AMERICA'S FOUNDATION IN RELIGIOUS FREEDOM* 160 (2003).

39. *Act for establishing Religious Freedom*, *supra* note 35, at 313.

40. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 14–15 (citations omitted).

41. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights . . ."). Jefferson's pride of principal authorship led him also to include the Declaration on his tombstone. RANDALL, *supra* note 24, at 595.

42. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 15.

Declaration itself violates the principle of separation of church and state.”⁴³

Some try to blunt the Declaration’s religiosity by characterizing its theological foundations as deistic. For example, the University of Chicago’s Professor Geoffrey Stone calls the Declaration “a statement . . . of American deism.”⁴⁴ According to Stone, deists “accepted the idea of a Supreme Being,” but rejected “the Judeo-Christian God, who intervenes in human history and listens to personal prayers.”⁴⁵ The Declaration’s last paragraph refutes this characterization. If God doesn’t interact with mankind, why did the signatories appeal to the “Supreme Judge of the World” to vindicate their honorable intentions and also express confidence in “the Protection of divine Providence”?⁴⁶

Students of the Declaration may protest that Jefferson didn’t author these two references to God. It’s correct that these statements were added on the floor of Congress.⁴⁷ But Jefferson signed the completed Declaration. It’s also clear that he personally believed both in prayer and God’s intervention in human affairs. Jefferson concluded his Second Inaugural Address by asking his hearers to join him in supplications to

[T]hat Being in whose hands we are, who led our forefathers, as Israel of old, from their native land, and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with his providence, and our riper years with his wisdom and power.⁴⁸

43. *Id.*

44. Geoffrey R. Stone, *The World of the Framers: A Christian Nation?*, 56 *UCLA L. REV.* 1, 13 (2008).

45. *Id.* at 6.

46. THE DECLARATION OF INDEPENDENCE para. 32 (U.S. 1776).

47. PAULINE MAIER, *AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE* 148–49 (1997).

48. Jefferson, *supra* note 27, at 345. It’s especially significant that Jefferson also concluded his famous 1802 Danbury Baptist letter by “reciproc[at]ing . . . [their] kind prayers for the protection and blessing of the common Father and Creator of man.” Jefferson, *supra* note 20, at 333. Incidentally, two days after Jefferson penned that letter, “he went to his first [Sunday] church service in the [United States] House [of Representatives], which he attended ‘constantly’ for the next seven years.” MANSFIELD, *supra* note 13, at 47.

Jefferson's 1787 book, *Notes on the State of Virginia*, also plainly states his belief that God intervenes in human history. Jefferson feared the wrath of God on account of slavery: "Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep forever: that . . . an exchange of situation, is among possible events The Almighty has no attribute which can take side with us in such a contest."⁴⁹ To forestall God's judgment, Jefferson hoped that "total emancipation" would soon come "with the consent of the masters, rather than by their extirpation."⁵⁰

Although Jefferson's fear of God's intervention in itself disproves the claim that he had a deistic conception of God,⁵¹ the late Christopher Hitchens wasn't impressed. To Hitchens, Jefferson was needlessly anxious because his statement about fearing God is "as incoherent as it is memorable: given the marvel of a god who was also just[,] there would be, in the long term, nothing much to tremble about."⁵² Hitchens apparently had a "high view of his own capacity to withstand a just evaluation."⁵³ As Part III will show, Abraham Lincoln took Jefferson's concern about God's justice very seriously.

49. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 163 (William Peden ed., 1955) (1787). Jefferson's language "in itself convincingly refutes any notion that [he] had a deistic conception of God. If God doesn't interact with humankind, why should Jefferson have feared God's justice?" Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 16 n.65. As we'll soon see, Jefferson's powerful prose foreshadowed one of the most famous speeches in American history. See *infra* notes 105–108 and accompanying text.

50. JEFFERSON, *supra* note 49, at 163. In 1854, over 3,000 New England clergymen opposed expanding slavery because they, like Jefferson, feared God's judgment. See *infra* note 172 and accompanying text.

51. Willard Randall shares this inaccurate view: Jefferson "believed in a supreme being who had set the world on its foundation and stepped aside." RANDALL, *supra* note 24, at 291.

52. HITCHENS, *supra* note 17, at 177.

53. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 16 n.65. Christopher Hitchens's brother, Peter, once agreed with him but does no longer. See PETER HITCHENS, THE RAGE AGAINST GOD: HOW ATHEISM LED ME TO FAITH 18–23 (2010). "Unlike Christians, atheists have a high opinion of their own virtue." *Id.* at 25.

*III. Religion and Politics Have Been Intermixed Since the
Founding*

“[A]s a matter of descriptive fact . . . religion and politics have been continually mixed in American public life.”⁵⁴ Historian Gordon Wood writes that during “the 1830s and 1840s . . . [e]vangelical Christians mounted crusade after crusade against a host of evils, including removal of the Cherokee Indians, lotteries, excessive drinking, bad prison and orphanage conditions, and, most important, slavery.”⁵⁵ Interestingly, Wood believed that this “inva[sion] [of] the public square” violated “the idea of a wall of separation.”⁵⁶ As I hope I’ve demonstrated in Part II, Wood misunderstands what Jefferson meant by his “wall of separation” metaphor. Just like Jefferson, Abraham Lincoln is another who didn’t hesitate to mix religion and politics.

It’s intimidating even to bring up the subject of Abraham Lincoln’s religious beliefs, a topic that emeritus Notre Dame historian Mark Noll says “has been a source of incessant debate almost from the moment of the assassination itself.”⁵⁷ I will argue that Lincoln to a substantial degree based his opposition to slavery

54. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 22; *see* Scalia, *supra* note 4.

55. Gordon S. Wood, *Praying with the Founders*, N.Y. REV. BOOKS, May 1, 2008, at 52, 55. The late Professor William Miller compiled a similar list:

The separating of church from state certainly has not meant—despite some shrill cries that it should—the separating of religion from politics. Far from it. Churches and churchgoers have been active in American politics and social policy on explicit religious grounds from the American Revolution through the abolition movement and the Civil War and the Social Gospel and the gospel of wealth and the Prohibition movement and the pacifist movement and the Civil Rights movement . . . and a great deal I am leaving out There are protests, but the pattern is that one objects to religion in politics when one disagrees with the political position taken but endorses it when one agrees with that position—a “moral” issue is then discerned and religion-in-politics is then not only acceptable but altogether fitting.

MILLER, *supra* note 38, at 247.

56. Wood, *supra* note 55, at 52. Professor Miller disagreed. *See* MILLER, *supra* note 55.

57. Mark Noll, *The Struggle for Lincoln’s Soul*, BOOKS AND CULTURE: A CHRISTIAN REVIEW, <https://www.booksandculture.com/articles/1995/sep/oct/5b503a.html> (last visited July 21, 2018) (on file with the Washington and Lee Law Review).

on his religious beliefs. A preliminary question, though, is whether Lincoln even had a serious religious faith. Princeton historian Sean Wilentz thinks not. Although Wilentz acknowledges Lincoln's increasing use of religious language, he nonetheless believes that Lincoln remained a "Victorian doubter" who never came to believe in a living God.⁵⁸

Professor Wilentz is wrong to freeze Lincoln as a religious skeptic. I agree with Stephen Mansfield "that Lincoln was, in fact, a religious pilgrim, and his spiritual journey is among the more fascinating and defining realities of his life."⁵⁹ "[T]he facts, if confronted head-on, demonstrate that Abraham Lincoln, by the end of his life, believed in a personal, sovereign God."⁶⁰ I make this claim in full awareness of the heavy burden of proof I'm shouldering. "Given Lincoln's great cultural significance, it really matters what he believed."⁶¹ Andrew Ferguson writes that "getting right with Lincoln" has been an obsession with "Americans of every imaginable persuasion: Leninists and vivisectionists, pacifists and vegans, gold bugs and free-marketers, imperialists and one-worlders . . . have all tried . . . to claim Lincoln as one of their own."⁶² Ferguson says it's not just that we all want "to be like Lincoln."⁶³ What we really want "is for Lincoln to be like us, whoever we are."⁶⁴ As a Christian, I believe in a personal, sovereign God.⁶⁵ I therefore must guard against concluding that Lincoln shared these beliefs just because I'd like that outcome.⁶⁶ Likewise, those who don't believe in such a God must guard

58. Sean Wilentz, *Who Lincoln Was*, NEW REPUBLIC (July 15, 2009), <https://newrepublic.com/article/62896/who-lincoln-was> (last visited July 21, 2018) (on file with the Washington and Lee Law Review).

59. STEPHEN MANSFIELD, LINCOLN'S BATTLE WITH GOD: A PRESIDENT'S STRUGGLE WITH FAITH AND WHAT IT MEANT FOR AMERICA 90 (2012).

60. Samuel W. Calhoun & Lucas E. Morel, *Abraham Lincoln's Religion: The Case for His Ultimate Belief in a Personal, Sovereign God*, 33 J. ABRAHAM LINCOLN ASS'N 38, 54 (2012).

61. *Id.* at 38 (citation omitted).

62. Andrew Ferguson, *Lincoln and the Will of God*, FIRST THINGS (Mar. 2008), <https://www.firstthings.com/article/2008/03/001-lincoln-and-the-will-of-god> (last visited July 21, 2018) (on file with the Washington and Lee Law Review).

63. *Id.*

64. *Id.*

65. For some of my other Christian beliefs, see *supra* note 7.

66. See Calhoun & Morel, *supra* note 60.

against rejecting contrary evidence regarding Lincoln's beliefs only because they'd find such an outcome undesirable.⁶⁷

But what does the evidence show? From the 1830s to the mid-1840s, the term most often used regarding Lincoln's religious views was "infidel."⁶⁸ Charges of religious infidelity plagued Lincoln's run for Congress in 1846. Lincoln's opponent was the legendary Reverend Peter Cartwright, "a rugged, sometimes violent . . . rifle-toting circuit rider."⁶⁹ According to Carl Sandburg's biography, Lincoln attended a Cartwright prayer meeting during which the old evangelist asked those to stand who wanted to give their hearts to God and go to heaven. A few stood. Then he asked those to stand who didn't want to go to hell. All stood up—except Lincoln. Cartwright then observed, "in his gravest voice," that Lincoln was the only one who didn't respond to either invitation: "May I inquire of you, Mr. Lincoln, where are you going?" Lincoln's reply? "I'm going to Congress."⁷⁰

Although Lincoln outsmarted Cartwright on this occasion, he took Cartwright's attacks on his religious orthodoxy very seriously. Cartwright's supporters had claimed that Lincoln was a "heathen"⁷¹ and an "infidel."⁷² Lincoln distributed a handbill that denied the charges.⁷³ Stephen Mansfield persuasively asserts that Lincoln lied.⁷⁴ Lincoln was elected with 57% of the vote.⁷⁵ Perhaps his victory is in part explained by his willingness on this occasion to misrepresent his religious convictions.⁷⁶ Following his father-in-law's death in July 1849, Lincoln met Reverend James D. Smith of Springfield's First Presbyterian Church.⁷⁷ Their relationship deepened following the February 1850 death of

67. See *id.* at 53–54.

68. See MANSFIELD, *supra* note 59, at 41–44, 49, 60–62.

69. *Id.* at 63.

70. 1 CARL SANDBURG, ABRAHAM LINCOLN: THE PRAIRIE YEARS 337 (1926).

71. See PHILIP B. KUNHARDT, JR., PHILIP B. KUNHARDT III, & PETER W. KUNHARDT, LINCOLN 70 (1992).

72. See *Cartwright, Peter (1785–1872)*, MARK E. NEELY, JR., ABRAHAM LINCOLN ENCYCLOPEDIA 49 (1982).

73. See DAVID HERBERT DONALD, LINCOLN 114 (1995).

74. See MANSFIELD, *supra* note 59, at 65.

75. See *id.*

76. See *id.*

77. See *id.* at 77–78, 80.

Lincoln's second son, Eddie. They spent hours discussing two volumes authored by Rev. Smith,⁷⁸ a work with a truly formidable title: *The Christian's Defense, Containing a Fair Statement, and Impartial Examination of the Leading Objections Urged by Infidels Against the Antiquity, Genuineness, Credibility, and Inspiration of the Holy Scripture; Enriched with Copious Extracts from Learned Authors.*⁷⁹ Shortly thereafter, the Lincolns began attending First Presbyterian.⁸⁰

On February 11, 1861, after his election as President, Lincoln left Springfield for Washington.⁸¹ His famous Farewell Address shows that his conception of God was now personal. Lincoln characterized the task before him as "greater than that which rested on Washington."⁸² Lincoln acknowledged his dependence on the same "Divine Being" who helped the first President.⁸³ But maybe he was just playing politics as he'd done with his 1846 handbill.⁸⁴ I don't think so. Much had happened since 1846 to change Lincoln.⁸⁵ Moreover, historian Douglas Wilson describes an "emotional exchange" between Lincoln and those gathered for his Springfield Farewell.⁸⁶ Lincoln spontaneously asked for prayer, which "elicited choked exclamations [from the crowd] of 'We will do it; we will do it.'"⁸⁷ Was this intense interaction orchestrated by an insincere Lincoln? If so, he must "be branded as one of history's greatest frauds."⁸⁸

Lincoln's First Inaugural Address on March 4, 1861 also shows his personal interaction with God. Mary Lincoln said that on that

78. *Id.* at 84–86.

79. *Id.* at 78.

80. *Id.* at 87.

81. *Springfield, Illinois*, NEELY, *supra* note 72, at 286.

82. *Id.* Recall that seven states had already seceded and the Confederacy had been established. See DONALD, *supra* note 73, at 267, 276; MANSFIELD, *supra* note 59, at 111.

83. *Springfield, Illinois*, *supra* note 81.

84. See *supra* notes 73–76 and accompanying text; see MANSFIELD, *supra* note 59, at 99.

85. See *supra* notes 77–80 and accompanying text.

86. DOUGLAS L. WILSON, *LINCOLN'S SWORD: THE PRESIDENCY AND THE POWER OF WORDS* 13 (2006).

87. *Id.*

88. Calhoun & Morel, *supra* note 60, at 74 n.210.

morning Lincoln spent time in private, but audible, prayer.⁸⁹ In the speech itself, Lincoln stressed his impending oath of office. He'd have an "oath registered in Heaven" to preserve the government, whereas his "dissatisfied countrymen" would have no such promise to destroy it.⁹⁰ But why would an "oath registered in Heaven" have special significance? "The only plausible answer is that Lincoln believed in a God to whom [he'd] owe a special responsibility to fulfill his promise. To speak of accountability to God is to conceive of God in personal terms."⁹¹

Lincoln's religious pilgrimage was impacted significantly in the four years between his first and second inaugurations. The February 1862 death of Lincoln's third son, Willie, once more plunged him into despair.⁹² It also deepened his relationship with Dr. Phinius Gurley, pastor of the New York Avenue Presbyterian Church, which Abraham and Mary attended regularly.⁹³ Lincoln also struggled to understand how God could've allowed the overwhelming carnage and death of the Civil War.⁹⁴ In September 1862, he recorded his thoughts in what's come to be known as the "Meditation on the Divine Will."⁹⁵ Lincoln's tentative conclusion was that God not only willed the War but also willed that it continue.⁹⁶ Later that same month, Lincoln surprised his Cabinet in announcing his decision to issue the Emancipation Proclamation.⁹⁷ Lincoln reported that he'd made a solemn

89. *Id.* at 66 n.120.

90. Abraham Lincoln, First Inaugural Address (Mar. 4, 1861), in IV COLLECTED WORKS, *supra* note 9, at 249, 271. According to the late Professor William Miller, Lincoln's meaning was, "[y]ou [the unhappy Southerners] are still in a realm of calculation and choice; I will be in the different moral realm of necessity. You can act differently; I cannot." WILLIAM LEE MILLER, PRESIDENT LINCOLN: THE DUTY OF A STATESMAN 25 (2008).

91. Calhoun & Morel, *supra* note 60, at 46 (citation omitted).

92. See DONALD, *supra* note 73, at 336–37; MANSFIELD, *supra* note 59, at 139–45.

93. See DONALD, *supra* note 73, at 337; MANSFIELD, *supra* note 59, at 124–27, 140–41, 143–44.

94. See MANSFIELD, *supra* note 59, at 162.

95. *Id.*

96. Abraham Lincoln, Meditation on the Divine Will, in V COLLECTED WORKS, *supra* note 9, at 403–04.

97. "No one who knew Lincoln could have ever predicted that he would pop familiar references to the Ancient of Days into a cabinet discussion, and Chase was so amazed that he asked Lincoln to repeat himself just to be sure he had

covenant with God to take this step if Robert E. Lee was driven back from his attempted invasion of Pennsylvania.⁹⁸ Because Lee was forced to retreat after the Battle of Antietam, Lincoln believed it was his duty to move forward with emancipation.⁹⁹ Both Gideon Welles and Salmon Chase recorded this incident in their diaries.¹⁰⁰

Lincoln's Second Inaugural Address, delivered on March 4, 1865, is further stunning proof of the religious transformation he'd experienced since his infidel years.¹⁰¹ Overall, it reads more like a sermon than a political address.¹⁰² Lincoln's God is personal in that He answers prayers, communicates through the Bible, and provides guidance "to see the right."¹⁰³ And Lincoln's God is sovereign: "The Almighty has His own purposes."¹⁰⁴ Lincoln's thesis is that the Civil War was God's punishment on the nation,

heard him right." ALLEN C. GUELZO, LINCOLN'S EMANCIPATION PROCLAMATION: THE END OF SLAVERY IN AMERICA 171 (2004); see MILLER, *supra* note 90, at 260.

98. DONALD, *supra* note 73, at 374–75; MANSFIELD, *supra* note 59, at 165.

99. DONALD, *supra* note 73, at 374–75; MANSFIELD, *supra* note 59, at 165.

100. 2 MICHAEL BURLINGAME, ABRAHAM LINCOLN: A LIFE 407–08 (2008). Allen Guelzo acknowledges the stark "contrast between the skeptical and infidel Lincoln of the pre-war days . . . and the Lincoln who now[,] . . . before a cabinet of sophisticated and thick-skinned politicians, offer[ed] as his reason for the most radical gesture in American history a private vow fulfilled in blood and smoke by the hand of God." ALLEN C. GUELZO, ABRAHAM LINCOLN: REDEEMER PRESIDENT 342 (1999). Nonetheless, Guelzo surprisingly concludes that Lincoln never came "the whole way to belief." *Id.* at 463. I believe the evidence shows that Guelzo is incorrect. See Calhoun & Morel, *supra* note 60, at 50–51. Lincoln's honoring his vow to God in itself is compelling. Lincoln "issued his Emancipation Proclamation—an act he considered one of the crowning achievements of his life—inspired by a covenant he made with God." MANSFIELD, *supra* note 59, at 166. This covenant "was possible only because Lincoln had moved from . . . rejecting God as myth . . . to accepting God as ruler of the world, and finally to honoring God as a good and covenant-keeping Father of all men." *Id.*

101. Jon Meacham describes the address as "startling in its religiosity." MEACHAM, *supra* note 32, at 121.

102. This was Frederick Douglass's opinion. See Ronald C. White, Jr., *Lincoln's Sermon on the Mount: The Second Inaugural*, in RELIGION AND THE AMERICAN CIVIL WAR 223 (Randall M. Miller, Harry S. Stout & Charles Regan Wilson eds., 1998). Douglass's viewing the address as "'a sacred effort' . . . helps us see that it was a deeply religious, as opposed to [a] merely political or historical, achievement." JACKSON, *supra* note 5, at 82.

103. Lincoln, Second Inaugural Address, *supra* note 9, at 333. Lincoln's looking to God for what's "right" is reminiscent of George Washington's First Inaugural Address, which expressed dependence upon heaven for "eternal rules of order and right." See *supra* note 13.

104. Lincoln, Second Inaugural Address, *supra* note 9, at 333.

both North and South, for the sin of slavery.¹⁰⁵ To Lincoln, who was aware that Jefferson had feared God's judgment on the country, the Civil War was a fulfillment of Jefferson's prophecy.¹⁰⁶ Lincoln hoped that God would be merciful: "Fondly do we hope—ferverently do we pray—that this mighty scourge of war may speedily pass away."¹⁰⁷ But he also humbly submitted both the country and himself to whatever God ordained:

Yet, if God wills that it continue, until all the wealth piled by the bond-man's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said, "the judgments of the Lord, are true and righteous altogether[.]"¹⁰⁸

So far, I've said a lot about Lincoln's religious beliefs, but little about their role in his opposition to slavery. Lincoln's "earliest pronouncement against slavery" was as an Illinois state representative in March 1837.¹⁰⁹ He simply described slavery as being founded on both "injustice and bad policy."¹¹⁰ When the 1854 Kansas-Nebraska Act brought Lincoln back into politics,¹¹¹ his criticism of slavery had expanded. Lincoln still spoke of "the monstrous injustice of slavery itself."¹¹² But now he also said he

105. See *id.* Lincoln "implicated both sides in guilt for the ongoing conflict." JACKSON, *supra* note 5, at 81.

106. Calhoun & Morel, *supra* note 60, at 59 n.38. See *supra* notes 49–50 and accompanying text.

107. Lincoln, Second Inaugural Address, *supra* note 9, at 333.

108. *Id.* (quoting *Psalm* 19:9 (King James)). These words are "the most profound of all condemnations of American slavery." MILLER, *supra* note 90, at 411. It's a "stark invocation of the justice of God against [the institution] . . . drop of blood for drop of blood." *Id.* at 410. "Stephen B. Oates observes that 'Lincoln's vision was close to that of old John Brown, who had prophesied on the day he was hanged . . . that the crime of slavery could not be purged from this guilty land except by blood.'" Calhoun & Morel, *supra* note 60, at 58 n.38 (quoting STEPHEN B. OATES, ABRAHAM LINCOLN: THE MAN BEHIND THE MYTHS 118 (1984)).

109. *Abolitionism*, NEELY, *supra* note 72, at 1.

110. Protest in Illinois Legislature Against Slavery (Mar. 3, 1837), I COLLECTED WORKS, *supra* note 9, at 74, 75. The late Professor William Miller would've contested my use of the word "simply" to describe Lincoln's language. Miller emphasized the significance of Lincoln's early denunciation of slavery as unjust. WILLIAM LEE MILLER, LINCOLN'S VIRTUES: AN ETHICAL BIOGRAPHY 124, 129 (2002).

111. *Kansas-Nebraska Act*, NEELY, *supra* note 72, at 170.

112. Abraham Lincoln, Speech at Peoria, Illinois (Oct. 16, 1854), *in* II

hated how slavery deprived “our republican example of its just influence in the world.”¹¹³ “Our republican robe is soiled, and trailed in the dust.”¹¹⁴ Why? Because slavery violated “the sheet anchor of American republicanism,” the Declaration of Independence, which declares that governments get their “just powers” only “from the consent of the governed.”¹¹⁵

None of these condemnations of slavery is principally religious, but others are. Lincoln argued “that slavery violated Jesus’s command that we treat others as [we’d] like to be treated.”¹¹⁶ “He also insisted that slavery contradicted the Bible’s teaching on the nature of work.”¹¹⁷ In the Second Inaugural, for example, Lincoln criticized the prayers of Southerners: “It may seem strange that any men should dare to ask a just God’s assistance in wringing their bread from the sweat of other men’s faces”¹¹⁸ And in an 1858 speech, Lincoln emphasized the Declaration’s assertion that all men have Creator-endowed unalienable rights:

This was [the Founders’] lofty, and wise, and noble understanding of the justice of the Creator to His creatures. Yes, gentlemen, to all His creatures, to the whole great family of man. In their enlightened belief, nothing stamped with the Divine image and likeness was sent into the world to be trodden on, and degraded, and imbruted by its fellows.¹¹⁹

COLLECTED WORKS, *supra* note 9, at 247, 255.

113. *Id.*

114. *Id.* at 276.

115. *Id.* at 266.

116. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 18 n.73.

117. *Id.* at 18.

118. Lincoln, Second Inaugural Address, *supra* note 9, at 333. Lincoln concluded this sentence by saying, “but let us judge not that we be not judged.” *Id.*

119. Abraham Lincoln, Speech at Lewistown, Illinois (Aug. 17, 1858), in II COLLECTED WORKS, *supra* note 9, at 544, 546. Lincoln’s emphasis on mankind as a bearer of God’s image foreshadows the same point stressed by Martin Luther King, Jr., in a sermon delivered at Atlanta’s Ebenezer Baptist Church:

You see, the founding fathers were really influenced by the Bible. The whole concept of the *imago dei* . . . the “image of God,” is the idea that all men have something within them that God injected. Not that they have substantial unity with God, but that every man has a capacity to have fellowship with God. And this gives him a uniqueness, it gives him worth, it gives him dignity. And we must never forget this as a

These religious arguments¹²⁰ demonstrate that Mark Neely's 1982 reference book, *The Abraham Lincoln Encyclopedia*, is wrong to claim that Lincoln "did not mix religion and statesmanship."¹²¹ H.L. Mencken would've agreed. Mencken thought that Lincoln's "most memorable feat . . . was his appointment of the Lord God Jehova to honorary chairmanship of the Republican National Committee."¹²² And listen to what Stephen A. Douglas said in his sixth debate with Lincoln in their famous 1858 United States senatorial contest. To Douglas, each state and territory had the right to decide the slavery question for itself. It didn't "become Mr. Lincoln, or anybody else, to tell . . . people . . . that they have no consciences, that they are living in a state of iniquity, and that they are cherishing an institution to their bosoms in violation of the law of God."¹²³ Douglas's next sentence is ironic given Lincoln's similar subsequent statement in the Second Inaugural—Douglas believed it would be better for Lincoln "to adopt the doctrine of 'judge not lest ye be judged.'"¹²⁴

My principal thesis is that the Constitution doesn't prohibit religious citizens from relying on their faith in advocating solutions to public policy disputes. Neither the Founders nor Lincoln hesitated to invoke religion in making public policy arguments.

nation: there are no gradations in the image of God. Every man from a treble white to a bass black is significant on God's keyboard, precisely because every man is made in the image of God. One day we will learn that. We will know one day that God made us to live together as brothers and to respect the dignity and worth of every man.

Martin Luther King, Jr., *The American Dream*, STAN. U.: THE MARTIN LUTHER KING, JR. RES. & EDUC. INST. (July 4, 1965), <https://kinginstitute.stanford.edu/king-papers/documents/american-dream-sermon-delivered-ebenezer-baptist-church> (last visited July 22, 2018) (on file with the Washington and Lee Law Review).

120. Professor Timothy Jackson argues that Lincoln's dominant rationale for opposing slavery ultimately was "charity enjoined by a supernatural God." JACKSON, *supra* note 5, at 65; *see id.* at 68, 71–72, 81. "The Second Inaugural's climatic words—'With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right'—live on in history as Lincoln's sublime transcendence of 'unimpassioned reason.'" *Id.* at 61; *see id.* at 81.

121. *Religion*, NEELY, *supra* note 72, at 261.

122. *Masters, Edgar Lee (1869-1950)*, NEELY, *supra* note 72, at 207.

123. Sixth Debate with Stephen A. Douglas, at Quincy, Illinois (Oct. 13, 1858), in III COLLECTED WORKS, *supra* note 9, at 245, 275.

124. *Id.* See *supra* note 118 and accompanying text.

But some assert other reasons for excluding religion from the public square. Part IV refutes these claims.

IV. No Other Arguments Justify Excluding Faith-Based Arguments from the Public Square

One argument for excluding religious viewpoints is admirable for its candor. According to Sam Harris, religious beliefs are “flagrantly irrational.”¹²⁵ To him, respecting religious faith is the biggest impediment to “a public discourse that encourages critical thinking and intellectual honesty.”¹²⁶ One simple fact brands Harris’s position as unpersuasive—the Reverend Martin Luther King, Jr., honored as the central figure in the Civil Rights Movement, openly invoked Christianity.¹²⁷ For example, in his 1963 *Letter from Birmingham Jail*,¹²⁸ King exhorted white moderates “to be co-workers with God . . . to make real the promise of democracy.”¹²⁹ To white ministers who argued that the gospel had “no real concern” with social issues like racial and economic injustice, King decried a “completely otherworldly religion” that separated “the sacred and the secular.”¹³⁰ He called for a return to the days when “the [Christian] church was not merely a thermometer that recorded the ideas and principles of popular opinion . . . [but instead] was a thermostat that transformed the mores of society . . . [by, for example] end[ing] . . . such ancient

125. HARRIS, *supra* note 16, at 87. “[F]aith is nothing more than the license religious people give one another to keep believing when reasons fail.” *Id.* at 67.

126. *Id.* at 87.

127. There is “overwhelming evidence of the centrality of King’s Christian faith to the struggle for civil rights.” Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 21 (citation omitted); see *supra* notes 5, 119; *infra* note 150. Some atheists have tried mightily to obscure this established fact. See *infra* note 133.

128. Coretta Scott King observed that this letter “has been hailed as a major statement on religious responsibility in social struggle.” KING, I HAVE A DREAM, *supra* note 5, at vii.

129. Martin Luther King, Jr., *Letter from a Birmingham Jail*, in KING, I HAVE A DREAM, *supra* note 5, at 83, 92.

130. *Id.* at 96. King “refused to divorce the sacred (the God worshipped by Jews and Christians) and the secular (the legal realities of American democracy).” JACKSON, *supra* note 5, at 382. “As a Baptist clergyman, King considered it not merely permissible but actually obligatory to engage publicly controversial political and economic issues.” *Id.*

evils as infanticide and gladiatorial contests.”¹³¹ He predicted that one day the South would recognize that protestors “were in reality standing up . . . for the most sacred values in our Judeo-Christian heritage.”¹³²

Harris might respond that King’s *Letter*, despite its conspicuous Christianity,¹³³ contains other types of arguments. Harris would be right. The *Birmingham Jail Letter* referred not only to “God-given rights,” but also to constitutional rights.¹³⁴ King also spoke of the “sacred heritage of our nation”¹³⁵ and “[what’s]

131. King, *Letter*, in KING, I HAVE A DREAM, *supra* note 5, at 97. King argued that the church should be a “headlight leading men to higher levels of justice” rather than “a taillight behind other community agencies.” *Id.* at 96.

132. *Id.* at 100.

133. Some reprints of the *Letter* appear designed to mask King’s emphasis on Christianity. See *Letter from Birmingham Jail* (Apr. 16, 1963), in CIVIL RIGHTS AND AFRICAN AMERICANS 502–09 (Albert P. Blaustein & Robert L. Zangrando eds., 1991) (1968). Not only does the editors’ introduction to the *Letter* fail to mention its pervasive religiosity, see Introduction, *id.* at 501, but their abridgment omits virtually all references to King’s faith. Compare *Letter from Birmingham Jail*, *supra*, with *supra* notes 129–132 and accompanying text. Similarly, Richard Dawkins, Sam Harris, and Christopher Hitchens all have tried to downplay King’s Christianity. The worst offender is Hitchens, who had the presumption to claim that King was only a “nominal” Christian.” HITCHENS, *supra* note 17, at 176. Dawkins and Harris at least admit that King was a Christian, but both credit Gandhi, not Christianity, with King’s non-violent philosophy. DAWKINS, *supra* note 15, at 271; HARRIS, LETTER, *supra* note 125, at 12. Dawkins and Harris are wrong. King indeed gave Gandhi credit for the “technique” of non-violent resistance. Martin Luther King, Jr., *My Trip to the Land of Gandhi*, in KING, I HAVE A DREAM, *supra* note 5, at 39, 40 (emphasis added); see JACKSON, *supra* note 5. But King didn’t credit Gandhi for the *philosophy* of non-violence. He instead drew upon the character of Jesus Christ. See King, *Letter*, in KING, I HAVE A DREAM, *supra* note 5, at 94; JACKSON, *supra* note 5. King believed that those who advocated violence had “absolutely repudiated Christianity.” See King, *Letter*, in KING, I HAVE A DREAM, *supra* note 5, at 93. The fact that King learned a particular protest tactic from Gandhi does nothing to diminish the centrality of Christianity to King’s fight for civil rights. See *supra* notes 5, 119; *infra* note 150.

134. King, *Letter*, in KING, I HAVE A DREAM, *supra* note 5, at 88. The term, “constitutional rights,” sounds secular, but a case can be made that “secular” would in fact be an inaccurate characterization. According to the Declaration of Independence, governments are established to protect God-given rights. See *supra* notes 40–42 and accompanying text. The Constitution is a critical component of the national government established to protect these rights. Thus, to the Founders the Constitution could hardly have been viewed as having a strictly secular purpose.

135. King, *Letter*, in KING, I HAVE A DREAM, *supra* note 5, at 98.

best in the American dream.”¹³⁶ What about appeals to religious beliefs that stand alone, such as in the proverbial bumper sticker, “God said it, I believe it, That settles it”? Can this type of argument possibly be legitimate?

In the first place, the “bumper sticker” scenario is largely a red herring. Moral assertions in the public square are seldom expressed solely in religious terms. As we’ve seen, both Abraham Lincoln and Martin Luther King, Jr. used both secular and religious arguments.¹³⁷ But what about rare situations in which only religious arguments are used? Philosopher John Rawls argued that exclusively religious arguments violate “an obligation of citizenship.”¹³⁸ Believers should know “that not everyone will share their religious premises or regard their arguments as providing good reasons for the policies and principles they favor.”¹³⁹ Religious arguments should therefore be supplemented with “properly public reasons.”¹⁴⁰

With all due respect to Rawls, I disagree.¹⁴¹ Many advocates, not just religious ones, fail to provide “good reasons” for those who don’t share the advocate’s “premises.” Richard Dawkins is a good example. He argues that we should cease discriminating on the basis of species.¹⁴² A “post-speciesist” approach, extending “humane treatment” to animals, “would be a natural extrapolation of earlier reforms like the abolition of slavery and the emancipation of women.”¹⁴³ Dawkins’s underlying premise is that evolution means that human beings aren’t entitled to any special

136. *Id.* at 100.

137. For Lincoln, see *supra* notes 109–119 and accompanying text. For King, see *supra* notes 128–136 and accompanying text.

138. See Paul J. Weithman, *John Rawls’s Idea of Public Reason: Two Questions*, 1 J.L. PHIL. & CULTURE 47, 48 (2007).

139. *Id.*

140. *Id.*

141. This short essay doesn’t purport to fully evaluate Rawls’s criticism of exclusively religious arguments. For a more comprehensive critique of Rawls, see JACKSON, *supra* note 5, at 155–85; Michael W. McConnell, *Secular Reason and the Misguided Attempt to Exclude Religious Arguments from Democratic Deliberations*, 1 J.L. PHIL. & CULTURE 159 *passim* (2007).

142. DAWKINS, *supra* note 15, at 264. He qualifies this aspiration by adding, with no explanation, “as far as possible.” *Id.*

143. *Id.* at 271. Humane treatment should be “meted out to all species that have the brain power to appreciate it.” *Id.*

moral status.¹⁴⁴ I reject Dawkins’s premise that denies special moral rights to humans.¹⁴⁵ So did Thomas Jefferson,¹⁴⁶ Abraham Lincoln,¹⁴⁷ and Martin Luther King, Jr.¹⁴⁸ Yet no one tells Dawkins that if he were a good citizen, he’d quit making such arguments. If secular arguments are permissible even when based on premises that others reject,¹⁴⁹ the same should be true for religious arguments.¹⁵⁰

144. *Id.* at 300–01. Evolution posits humankind’s “evolutionary continuity . . . with every species on the planet.” *Id.* at 300. From this premise, it’s “simple” to reach a conclusion that rejects “[a]bsolutist moral discrimination” between mankind and other animals. *Id.* at 300–01.

145. This doesn’t mean I favor inhumane treatment of animals. The key issue is determining what “humane treatment” entails. Post-speciesism would seemingly require stopping the general practice of eating animals. *See, e.g.*, PETER SINGER, *ANIMAL LIBERATION* 229, 243–44 (2d ed. 1990). I don’t agree that acting morally demands this result, despite the fact that it has some evangelical Christian support. *See* SARAH WITHROW KING, *ANIMALS ARE NOT OURS (NO, REALLY, THEY’RE NOT); AN EVANGELICAL ANIMAL LIBERATION THEOLOGY* 6–8 (2016).

146. Jefferson believed that the Creator endowed “all *men*” with “unalienable rights.” THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (emphasis added). *See supra* note 41 and accompanying text.

147. *See supra* note 119 and accompanying text.

148. King substantially relied upon Jefferson’s “majestic words” in the Declaration of Independence. King, *Letter*, in KING, *I HAVE A DREAM*, *supra* note 5, at 98; *see id.* at 94, 100. King also stressed the unique value accorded mankind through bearing God’s image. *See supra* note 119.

149. Timothy Jackson argues that Rawls’s own conception of justice fits this description. For Rawls, appealing exclusively to “comprehensive doctrines,” such as religious beliefs, is disqualified in “a democratic polis.” JACKSON, *supra* note 5, at 183. But Rawls’s “duty of civility,” the basis of this disqualification, flows from Rawls’s particular “conception of justice,” i.e., “fairness.” *Id.* Rawls himself acknowledged that many reasonable people aren’t persuaded that “fairness is the *only* reasonable conception [of justice].” *Id.* Consequently, since “[p]ublic reasons are not sufficient . . . [to substantiate] Rawls’s . . . concept[] of justice . . . [he] presumably . . . ought not to advocate his specific ‘theory’ in basic or constitutional contexts.” *Id.* Rawls, of course, nonetheless continued to promote his theory. Religious believers should be accorded the same privilege.

150. I’m not saying that believers are required to make exclusively religious arguments. Religious citizens should use prudent political judgment to evaluate when it’s best to frame their arguments in ways more likely to persuade those outside their faith communities. Exclusively religious arguments would usually be unwise. As previously stated, however, *supra* note 11, a case can be made that Christians should always *include* religious arguments in articulating their public policy positions. King, for example, although he frequently used liberal democratic terminology, didn’t “flinch from a trumping emphasis on spiritual values such as faith, nonviolence, ‘soul force,’ and ‘the glory of the Lord.’”

A final reason¹⁵¹ to exclude religious discourse from the public square is the alarm many people feel when they perceive that others are trying to impose their religious faith. Yale Law Professor Stephen Carter writes that “in contemporary political and legal culture, nothing is worse” than the charge that “you are intent on imposing your religious beliefs on other people.”¹⁵² But isn’t virtually all law an imposition of someone’s values?¹⁵³ Then-Senator Barack Obama thought so: “To say that men and women [shouldn’t] inject their ‘personal morality’ into public policy

JACKSON, *supra* note 5, at 396 (citations omitted).

It would be highly misleading to characterize Martin Luther King Jr. . . . as invoking a comprehensive religious doctrine for the sake of political values and ideals. The motivation was obedience to God and love of the neighbor as [a] fellow creature of God. Obviously, King had political goals, legislative agendas, etc.; but these were inspired by his antecedent religious faith, not the other way round.

Id. at 182 (citation omitted). King “insisted that ‘the calling to be a son of the living God’ is ‘beyond the calling of race or nation or creed.’” *Id.* at 396 (quoting Martin Luther King, Jr., *A Time to Break Silence* (Apr. 4, 1967), in KING, *I HAVE A DREAM*, *supra* note 5, at 140). “Even his identity as a civil rights activist or Vietnam War protestor was second to his ‘commitment to the ministry of Jesus Christ.’” *Id.* (quoting King, *supra* at 139); *see id.* at 264.

151. It’s sometimes argued that faith-based public policy violates the Establishment Clause. Accepting this view would mean that the Declaration of Independence, Lincoln’s actions against slavery, and King’s fight against racial inequality would all have violated the Constitution. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 29 n.127. Moreover, this result would contradict repeated Supreme Court determinations “that no Establishment Clause violation occurs from the mere fact that a governmental action implements a policy that coincides with a religious belief.” *Id.*

152. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 23 (1993).

153. The late novelist Joan Didion believed that inserting a claim of faith or morality “into political debate . . . is inherently dangerous because ‘the needs and rights of some citizens might be overridden to accommodate the needs and rights of those holding the high ground.’” Calhoun, *Book Review*, *supra* note 1, at 412 (quoting JOAN DIDION, *GOD’S COUNTRY*, N.Y. REV. BOOKS 68, 76 (Nov. 2, 2000)). This perspective “reveals stunning naivete about the nature of politics, which is nothing if not a process in which some citizens’ needs are always being overridden so that other citizens can achieve their goals.” *Id.* Stephen Douglas’s belief that Lincoln was imposing religious faith, *see supra* text accompanying note 123, didn’t stop Lincoln, despite his stated disinclination to judge Southerners, *see supra* note 118 and accompanying text, from doing what he thought was right regarding slavery. And King “made no effort to disguise [his] true intention: to impose [his] religious morality on others, on the dissenters who would rather segregate their hotels or lunch counters.” Carter, *supra* note 152, at 229.

debates is a practical absurdity. Our law is by definition a codification of morality”¹⁵⁴ Obama cited both Lincoln and King to support his view that people of faith have the right to express religious values in religious terms in the public square.¹⁵⁵

Three additional arguments show that Obama’s conclusion is correct. First, consider his phrase, “practical absurdity,” in a different context. It’s totally unrealistic to expect religious citizens to restrict their sense of right and wrong to the private sphere. Are persons “of faith to care about virtue only when dealing with” neighbors across their back fences?¹⁵⁶ Can believers “reasonably be expected to have no interest in broader societal issues that implicate justice?”¹⁵⁷

Second, not only is it unrealistic, it’s also unfair to ban religious values from the public sphere. “Disagreement about important . . . [public issues] often involves the clash of foundational presuppositions. Many who seek to muzzle religious believers . . . are attempting to privilege their own atheistic or agnostic presuppositions This then enables them more easily to impose their own values upon society.”¹⁵⁸

Third, those seeking to squelch religious arguments expose themselves as “people lacking a true commitment to diversity.”¹⁵⁹ Consider the illogical conclusion to Frank Rich’s 2006 *New York*

154. Barack Obama, *Obama’s 2006 Speech on Faith and Politics*, N.Y. TIMES (June 28, 2006), <https://www.nytimes.com/2006/06/28/us/politics/2006obamaspeech.html> (last visited July 22, 2018) (on file with the Washington and Lee Law Review). Senator Obama acknowledged that in 2004 he had made the “typically liberal” statement that in a pluralistic society one shouldn’t impose one’s religious views upon another. *Id.* By 2006, however, he had changed his mind, then believing that it’s wrong “to ask believers to leave their religion at the door before entering into the public square.” *Id.*

155. *Id.* “[I]magine Dr. King . . . in front of the Lincoln Memorial and having to scrub all his religious references, or Abraham Lincoln in the Second Inaugural not being able to refer to God.” Interview by Campbell Brown and Jon Meacham with then-Senator Barack Obama, in Mechanicsburg, Pa. (Apr. 13, 2008).

156. Calhoun, *Getting the Framers Wrong*, *supra* note 12, at 12.

157. *Id.*

158. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 37. Peter Hitchens argues that “the new anti-theism is emphatically not just an opinion seeking its place in a plural society. It is a dogmatic tyranny in the making.” HITCHENS, *supra* note 53, at 206 (Peter Hitchens elsewhere describes both his brother, Christopher Hitchens, and Richard Dawkins as “prominent” anti-theists. *See id.* at 11–12).

159. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 37.

Times editorial criticizing Senator Joe Lieberman’s “incessant Bible thumping [w]hile running for vice president in 2000.”¹⁶⁰ To Rich, Lieberman’s words were “inappropriate and even unsettling in a religiously diverse society such as ours.”¹⁶¹ “Astoundingly, and ironically, Rich . . . [is apparently] quite content to exclude Bible-thumpers as legitimate participants in political debate in our ‘religiously diverse society.’ To [him], diversity obviously has its limits.”¹⁶²

V. Conclusion

My goal has been to defend the appropriateness of religious citizens’ reliance on their faith in advocating solutions to public policy disputes. Part II demonstrated that the Founders, represented by Thomas Jefferson, didn’t intend separation of church and state to separate religion from politics. Jefferson instead wanted his famous wall to protect religion from governmental interference. It’s also richly ironic to rely upon Jefferson to “shut up” religious believers. Jefferson defended his Virginia Statute for Religious Freedom by arguing that it was a “dangerous fal[l]acy” for government “to restrain the . . . propagation” of opinions due to their supposed “ill tendenc[ies.]”¹⁶³ To him, truth had “nothing to fear” in a conflict with error unless truth is “disarmed of her natural weapons, free argument and debate.”¹⁶⁴ Those who would muzzle religious

160. *Id.* (quoting Frank Rich, Opinion, *The Passion of the Embryos*, N.Y. TIMES, July 23, 2006, at 12).

161. *Id.* at 37 (noting that Rich endorsed the opinion of the Anti-Defamation League).

162. *Id.* at 37. “[D]emocratic governance” requires making room for all viewpoints in the electoral process. JACKSON, *supra* note 5, at 204–05. Even if religious perspectives lose in the end, their proponents “would . . . at least [have] had their say. . . . When, in contrast, appeals to ‘neutrality’ or ‘tolerance’ succeed in foreclosing public debate on a moral issue, civil war may threaten precisely because no real social compromise is possible.” *Id.* at 205; *see id.* at 191. Using “political liberality” to preempt “the requisite argument and negotiation” leads to labeling “political discussion itself . . . [as] ‘fanaticism’ or ‘incivility.’” *Id.* at 205. “In such a context, competing viewpoints can *only* degenerate into factions that bait and loathe one another, all the while ‘respecting’ one another’s ‘rights.’” *Id.*

163. *Act for establishing Religious Freedom, supra* note 35, at 312.

164. *Id.* at 313.

viewpoints by arguing a principle of separation assume the role of the very government censors that Jefferson spoke against. They invoke Jefferson, mischaracterizing what he meant by separation, only to betray his legacy as a defender of open inquiry and free speech.

Part III emphasized the critical role of religion in Abraham's Lincoln's opposition to slavery. Lincoln made explicitly religious arguments, and his Second Inaugural is openly religious to an extraordinary degree. Should this speech therefore be sandblasted from the north inside wall of the Lincoln Memorial because it violates the principle of separating church and state?

Part IV refutes other justifications for excluding faith-based arguments from the public square. It's not rational to denigrate as "irrational" religious arguments like those made by Martin Luther King, Jr. It's also unfair to bar religious citizens from fully participating in public policy disputes. Doing so stacks the deck in favor of those guided by atheistic or agnostic presuppositions.

Truly valuing diversity also requires inclusion of faith-based arguments. "A diverse discourse is valuable precisely because it contains points of view . . . that some participants will disagree with or even abhor."¹⁶⁵ Thomas Jefferson placed a high value on this conflict among competing ideas. Such clashes "will sometimes, perhaps often, create discomfort [or even disgust,] but this is an inevitable cost of a genuine allegiance to democratic ideals."¹⁶⁶

Many readers may be unconvinced. Some, for example, may think that religious beliefs are fine if confined to private life but still assert that religious arguments are inappropriate in the public square. What, though, about the full-page ad in the Washington Post on February 7, 2018? It's an open letter to President Trump and Congress from over 100 Christian evangelical leaders and pastors.¹⁶⁷ The letter expresses support for "just, compassionate and welcoming policies toward refugees and other immigrants."¹⁶⁸ What grounds are stated? That "[t]he Bible speaks clearly and repeatedly to God's love and concern for the

165. Calhoun, *Embryonic Stem Cell Vetoes*, *supra* note 12, at 38.

166. *Id.*

167. *Top Evangelical Leaders and Pastors from All 50 States Urge Action to Help Vulnerable Immigrants.*, WASH. POST, Feb. 7, 2018, at A27.

168. *Id.*

vulnerable, and also challenges us to think beyond our nationality, ethnicity or religion when loving our neighbor.”¹⁶⁹ The letter also states that all human beings are “made in the image of God” and describes the family as the God-ordained “cornerstone of society.”¹⁷⁰ Prayers are expressed for several specific policy objectives.¹⁷¹

Given that the signers’ Christian faith substantially influenced their policy positions on immigration, should they have refrained from posting the letter? Was it appropriate for them to publish it, but only if they’d omitted their explicitly religious arguments? Was the letter more or less objectionable than an 1854 memorial to Congress signed by more than 3,000 New England clergymen who protested the Nebraska Bill as seriously immoral, exposing the country to God’s judgment, because it made expanding slavery possible?¹⁷² Does the February 2018 immigration letter, which now has over 3,600 online signers,¹⁷³ enrich our democracy or harm it? By now it should be clear how I’d answer these questions.¹⁷⁴

169. *Id.*

170. *Id.*

171. *Id.* (protecting the Dreamers, offering refuge to those fleeing persecution, combatting religious persecution overseas, and respecting family unity).

172. PHILIP HAMBURGER, SEPARATION OF CHURCH AND STATE 244–45 (2002). “Protestant ministers in New England and New York preached over 3,200 sermons in the space of only six weeks” in opposition to the Bill. *Id.*

173. See *Evangelical Leaders Urge Action to Help Dreamers, Refugees, Persecuted Christians & Immigrant Families*, WORLD RELIEF, <https://immigration-worldrelief.nationbuilder.com/> (last visited July 22, 2018) (providing access to sign the letter online and showing that over 3,600 signatures have already been collected) (on file with the Washington and Lee Law Review).

174. As previously stated, my answer would be the same even when religious believers support policy positions that many, if not virtually all, people would find offensive. See *supra* text accompanying notes 165–166. Valuing free speech means little if one protects only the right to express ideas one agrees with. See *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (explaining that the concept of free speech is intended to protect the expression of unwanted or conflicting beliefs).